IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21/04/2004

CORAM

THE HONOURABLE MR JUSTICE N.DHINAKAR
and
THE HONOURABLE MR JUSTICE D.MURUGESAN

Writ Appeal No. 562 of 2003
and
W.A.M.P.No. 724 of 2003

V.Varadharasu ... Appellant

-Vs-

1. Union of India,
rep. by the Chief Secretary of
Union Territory of Pondicherry.

2. The Deputy Collector,
Land Acquisition,
Pondicherry. ... Respondents

Prayer: Appeal against the order dated 13.12.2002 made in W.P.No. 1 87 of 1996 on the file of this Court.

!For Appellant : Mr. G.Masilamani, S.C.
^For Respondent : Mr. Syed Mustafa,
Government Pleader (Pondicherry)

:JUDGMENT

(Judgment of the Court was delivered by N.DHINAKAR, J)

The lands of the appellant were acquired under the Land Acquisition Act (Central Act 1 of 1894) (for short, 'the Act') for providing house sites to the people belonging to Adi Dravida community. The notification under Section 4(1) of the Act was given on 20.6.1994 and it was published in the gazatte on 5.7.1994 and later, a notice was also sent to the appellant by letter No.51-2/A3/93/DC-LA calling for his objections, if any. The appellant filed his objections to the second respondent in writing on 11.7.1994. He gave another representation on 7.9.1994 requesting the authorities to withdraw the acquisition proceedings. After sometime, a Declaration under Section 6 of the Act was published on 8.2.1995 proposing to acquire the above mentioned lands of the appellant. Challenging the acquisition proceedings, the appellant filed the writ petition before the learned Single Judge on the main

contention that he was not served with a copy of the notice for enquiry under Section 5-A of the Act. The learned Single Judge dismissed the writ petition on the ground that the letter dated 10.3.199 7 of the Village Administrative Officer indicates that the appellant refused to receive the notice and therefore, the notice was served by affixure and under the circumstances, the appellant cannot be allowed to contend that he was not served with notice for 5-A enquiry. This order is being challenged before us by the appellant in the writ appeal.

2. The learned counsel appearing for the appellant, reiterating the contentions raised before the learned Single Judge, submits that the procedure for service of notice, as contemplated under Section 45 of the Act, is mandatory and as the said procedure was not followed, the land acquisition proceedings are bad in law.

3. On the above contention, we have heard the learned Government Pleader, Pondicherry. The Government Pleader, Pondicherry, producing the file before us, which contains the letter of the Village Administrative Officer dated 10.3.1997 of Sandhaipudukuppam, submits that the letter indicates that though the Village Administrative Officer attempted to serve the notice on the appellant, he refused to receive the same and therefore, it was served by affixure and in the above circumstances, it cannot be contended that the appellant was not served with notice for enquiry under Section 5-A of the Act.

4. We have carefully considered the contentions and perused the entire file. The only question that is to be decided is, whether notice was served as per the terms of Section 45 of the Act, which reads as follows:-

"45. Services of notices:-
(1) Service of any notice under this Act shall be made by delivering or tendering a copy thereof signed, in the case of a notice under Section 4, by the officer therein mentioned, and, in the case of any other notice, by or by order of the Collector or the Judge.

(2) Whenever it may be practicable, the service of the notice shall be made on the person therein named.

(3) When such person cannot be found, the service may be made on any adult male member of his family residing with him; and, if no such adult male member can be found, the notice may be served by fixing the copy on the outer door of the house in which the person therein named ordinarily dwells or carries on business, or by fixing a copy thereof in some conspicuous place in the office of the officer aforesaid or of the Collector or in the Court-house, and also in some conspicuous part of the land to be acquired:
Provided that, if the Collector or Judge shall so direct, a notice may be sent by post, in a letter addressed to the person named therein at his last known residence, address or place of business and registered under Sections 28 and 29 of the Indian Post Office Act, 1898(VI of 1898) and service of it may be proved by the production of the addressee's receipt."

5. It is not in dispute that notice for enquiry under Section 5-A of the Act is mandatory and the service is also to be effected in the manner contemplated under Section 45 of the Act. In support of the said view, an useful reference can be made to the judgment of the Apex Court reported in RAMBHAI LAKHABAI BHAKT -vs- STATE OF GUJARAT (AIR 1995 SUPREME COURT 1549).

6. It is the contention of the respondent that as the notice was refused to be received by the appellant, it was served by affixure and the Village Administrative Officer has also sent a letter to the authorities intimating the said fact and therefore, there was service of notice. In this background, certain dates are necessary to be mentioned at this stage. The notice is dated 4.10.1994 and as per the notice the appellant was required to appear before the authorities concerned on 10.10.1994. Therefore, it is clear that the notice ought to have been served upon the appellant before 10.10.1994, so as to enable him to appear before the officer concerned for the enquiry under Section 5-A of the Act. The Government Pleader, Pondicherry, placing reliance upon the letter of the Village Administrative Officer dated 10.3.1997, submits that the notice was effected before 10.10.1994. The letter was perused by us. It is, of course, true that in the letter, he has stated that he made an attempt to serve the notice on the appellant; but it was refused and therefore, it was effected by affixure. We cannot lose sight of the fact, at this stage, that the said letter is dated 10.3.1997. If the Village Administrative Officer has attempted to serve the notice, but could not succeed on account of the refusal of the appellant to receive the same and therefore, was constrained to serve it by way of affixure, then nothing prevented the Village Administrative Officer from immediately intimating the said fact to the authorities concerned about the service of notice by affixure. He has not chosen to do so, as the file does not disclose any attempt of the Village Administrative Officer to inform the said fact to the authorities prior to 10.3.1997. In the said letter, he has not indicated that he has intimated the authorities prior to 10.3.1997 about the refusal of the appellant to receive the notice; but on the contrary, the recitals in the letter show that he was keeping the notice with him, since he has stated that he was searching for the appellant and therefore, served the notice by affixure. He did not even say as to when he served the notice by affixure. If the affixure was much later to 10.10.1994, then such affixure will have no value, since by then, the enquiry would have been over on 10.10.1994 and therefore, the appellant could not have had an opportunity of appearing before the authorities for the enquiry under Section 5-A of the Act.

7. There is yet another factor, which creates a doubt in the mind of the Court about the letter of the Village Administrative Officer, which is dated 10.3.1997. A perusal of the letter shows that initially the date 14.10.1994 was written as the date of attempted service of notice on the appellant, that is, after the enquiry was over on 10.10 .1994 and later, the date is seen corrected as 4.10.1994, which is visible even to the naked eye, as the letter "1" is seen shadowed with whitener. It is to be remembered at this stage that the writ petition was filed on 3.7.1995 and even according to the Government Pleader, the letter was received after the filing of the writ petition, which shows that the Village Administrative Officer forwarded the letter much later to the enquiry, which was conducted on 10.10.1994, and in

this background, we do not attach any importance to the said letter of the Village Administrative Officer to hold that the notice was effected by way of affixure. The valuable right of appearing before the enquiry proceedings and making objections to the acquisition proceedings cannot be taken away by producing such letters and this Court cannot act upon such letters to hold that there was notice on the appellant requiring him to appear for 5-A enquiry.

8. In view of our discussion, we are unable to accept the findings of the learned Single Judge that the letter dated 10.3.1997 is a contemporaneous record regarding the service of notice and in that view of the matter, we set aside the order of the learned Single Judge and direct the authorities concerned to proceed from the stage of 5-A enquiry with liberty to the respondents to issue fresh notice for 5-A enquiry to the appellant and proceed further in accordance with law. The writ appeal is allowed. Consequently, connected W.A.M.P. is closed.

Index:Yes
Website:Yes

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To

1. Union of India,
rep. by the Chief Secretary of
Union Territory of Pondicherry.

2. The Deputy Collector,
Land Acquisition,
Pondicherry.

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